THE

MADRAS LAW JOURNAL.

VOL.] FEBRUARY, 1926. [L.

LAW REPORTS*

VI. ENGLISH REPORTS.

Sir Orlando Bridgman was among the most eminent common lawyers of the period near the Restoration and though as a loyalist he declined to practise before the Commonwealth Judges his interest in law was so great that he had an account brought to him every day of all that was happening in the Courts. The Reports going under his name are Reports of his own judgments as Chief Justice of the Common Pleas. They cover a period of seven years from 1660 to 1667. The cases having been prepared by Bridgman himself for publication (though not actually published by him) possess high authority. Many compliments have been paid to him as a lawyer by Lord Campbell, Lord Nottingham, Lord Ellenborough and other eminent men, but the highest compliment is that paid by Carter, one of his Reporters, that "He always argued like a lawyer and a gentleman." He was for some time Lord-keeper of the Seal, but his judgments in that capacity have been but scantily reported, but so far as they go we have the assurance of Campbell that they have been correctly decided. In *Charles Fry v. George Porter* (1) a dialogue is reported between him and Chief Justices of the King's Bench and the Common Pleas and the Chief Baron of the Exchequer whom he had summoned to assist him in a difficult Equity case, where he is seen supporting the practice of citing precedents in Equity as against Chief Justice Vaughan who said it was no use citing precedents in Equity. "For if there be equity in a case that equity be a universal truth and there

*The sixth of a series of lectures arranged by the University of Madras delivered by Mr. B. Sitarama Rao, Vakil, High Court.

1. 1 Modern 300 at 307.

can be no precedent in it." The view of Bridgman prevailed. Sir Thomas Raymond's reports cover the period from 1660 to 1684. He was successively Baron of the Exchequer and Justice of the Common Pleas, and reported cases indifferently from all the three Courts. His son Lord Raymond is also a reporter. A case, *Lee* v. *Ragnes* (2) in his report was found on examination to be misreported. The corrected report appears in 1 Keble 799. Leviaz, though a good lawyer, is said to have been a careless reporter, though better than "Keble," who, with Siderfin, has the worst reputation. He was Attorney-General and sometimes Judge of the Common Pleas. He reports King's Bench and Common Pleas cases between 1660-1697. His reports were originally in French but were translated by Sergeant Salked into English. He reports curious cases like this one—Assumpsit, to pay for a horse a barley corn a nail, doubling every nail and avers that there were thirty-two nails in the shoes of the horse which being doubled every nail came to 500 quarters of barley, several dozens of times the value of the horse, which was not more than £8. Lord Chief Justice Hyde took a view of the case which resulted in giving the vendor only £8 and no more. We have in his reports illustrations of the absurd lengths to which technicalities of pleading were carried at the time which led actions to fail for bad Latin or bad grammar. In *Hawkins* v. *Mills* we have an opinion that if for the Roman figure XII Arabic figure 12 were given in the award of *Venire Facias* the judgment would have been stayed.

Keble (1661-1679) seems to be given a worse character than he deserves. The one trouble about his report is that he printed his notes as he took them in Court. So the report of a case could be got only by piecing together the notes printed in many places. He has been found sometimes to be more reliable than the other reporters. There are so many reporters of this time covering about the same period and giving the reports in varying degrees of fullness—some giving full reports, some reports of arguments, some of judgment, some of facts and so forth. By putting together these various bits of information occasionally a fairly full and accurate report can be had. Keble's reports are generally speaking mere notes, very short, with little or no statement of facts. Part of the ill repute of Keble is due to the Judges who were not particularly remarkable for their learning or ability. The

2. 10 Modern 251.

well-known cases of *Manby* v. *Scot* and *Collingwood* v. *Pace* are reported in Keble.

First or J. Kelyng's Reports deal with criminal cases (1662-1669) and have the distinction of having for their reporter a Chief Justice and for their publisher another Chief Justice, Lord Holt. Lord Campbell says that Kelyng had among other vanities the ambition to be an author and that these are the result but that they are worthless being full of silly egotisms. They show one thing, that the Judges and Crown Counsel used to meet together and settle between themselves beforehand the points that might arise in the trial. Viner speaks highly of Kelyng in his abridgment.

The successor of Kelyng was Sir Mathew Hale, one of the greatest of English judges and jurists, though he was not above the superstitions of his age. He was responsible for the conviction of some innocent women as witches. Before he became Chief Justice, which event happened in 1671, he was for 11 years Lord Chief Baron of the Exchequer and for some time he was a Judge of the Common Pleas also under the Commonwealth. As an Advocate he began, it is said, with the rule of never pleading except on the right side, but gradually he had to modify the rigour of the rule. His Common Place Book, compiled when a student, is said to be a very accurate compendium of the English Law. His pleas of the Crown is a complete digest of the Criminal Law of his time and up to this day is one of the standard works on that branch of the law. His other works are Analysis of the Civil Law of England, which inspired Blackstone's commentaries, and the History of the Common Law of England. He was eminent all round, both in Equity and Common Law. He continued Chief Justice till 1675 when he solicited his "writ of ease" owing to ill health and retired.

Carter's Report of the Common Pleas (1664-1676) is generally regarded as an inaccurate report having been specially condemned by Lord Holt, Chief Justice (3) and by Treby, Chief Justice (4), but contains an interesting case about a deaf mute who was permitted by Bridgman to levy a fine on satisfying himself that she was intelligent enough to do so. Carter was the author of some worthless books on custom and no more. Sir J. Vaughan became Chief Justice of the Common Pleas in 1668 and con-

3. 4 Common Bench 592. 4. 12 Modern 287.

tinued so till 1674. His reports of the Common Pleas (1665-1674) are of unequal merit. Some cases were written by the Chief Justice himself and they are good. Some are mere notes intended by him to be perfected later on. There is no doubt about the genuineness of the reports and they are published by his son. Chief Justice Treby spoke disparagingly of these reports but it is suggested that it may have been due to the difficulty he had in answering a case cited from these reports against his own opinion. The manner in which Vaughan treated the opinion of other Judges may be estimated by the following comment of his in reference to an earlier case :—" An illegal resolution grounded upon reasons not fit for a declamation much less for a decision of law. "

Saunders' Reports (1666-1673) of the King's Bench are regarded as the most valuable and accurate reports of the age having received the approval of the Chief Justice Willes (5), Lord Eldon (6) and Justice Yates (7). These reports were first published with records in Latin and arguments and judgments in French. His style is clear, terse and epigrammatic. Lord Mansfield called him the " Terence " of reporters and "he supports the forensic dialogue with exquisite art, displaying infinite skill in the points which he makes and the manner in which he defends them doing ample justice at the same time to the ingenuity and the learning of his antagonist." This is the verdict of Lord Campbell, who is very critical of him as Chief Justice. His reports came into special prominence by the learned notes written on them by Williams which are esteemed in fact as a text-book (8). You will find digested in them all the available learning on pleadings. They have not ceased to be of interest for that reason but are still valuable though not in the same degree for instance, questions like, "When a tenant can deny title of the landlord without forfeiture " or " When an action for money had to the use of, can be brought," or "When a plea of tender is good?" and so forth, will be found to be discussed there with the greatest fullness. The reports record an instance in which Saunders succeeded by the subtlety of his pleadings in trapping his unwary opponent into a small technical omission which cost him the action. In one case we find the Court expressing an opinion which the reporter pronounces to be wrong and the subsequent decisions have preferred the

5 and 6. 2 Bos and Pull 23, Willes 479. 7. 3 Bur 1730.

8. 3 Bos and Pull 178, 1 East 421, 95n, 3 Dowl 5.

reporter's opinion to that of the Court. He became Chief Justice of the King's Bench though he did not live long to enjoy the high office or to make an impression on the law.

Second or Sir Thomas Jones' Reports are of respectable authority. They are so called to distinguish them from the reports of Sir William Jones. He was a Judge of the King's Bench under Charles I but was removed by James II as he opposed the King's claim to the dispensing power.

Sir Peyton Ventris, one of the Judges of the Common Pleas, reports King's Bench, Common Pleas and Chancery cases of the same period.

Pollexfen reports the cases of King's Bench, Common Pleas, Exchequer and Chancery between 1669-1685. Most of the cases are those in which he appeared. He became successively Attorney-General and Chief Justice of the Common Pleas. The reports are considered good. The only defect is the arguments are given at inordinate length while the judgments are proportionately as brief.

Modern Reports are the designation by which Leache's Modern Reports are known. They are in 12 volumes. This series was not always in 12 volumes. To start with the name was confined to the first four volumes. Then a fifth was added. Seven other volumes published from time to time under the names of modern cases,cases temp. Macclesfield, cases temp. Queen Anne, cases in the King's Bench, temp. William III, were all made into one series and called Modern Reports. The volumes are of varying quality but have been generally condemned. The first volume by Colquit, where there is a report of *Manby* v. *Scot*, deals with K. B. and C. P. cases from 1669 to 1678 and is considered of merit. The second dealing principally with C. P. cases (1674-1683) also is a fair authority though Holt, Chief Justice, seems to have objected to its citation but his objection appears to have been more personal to the counsel than to the report. Blackstone frequently cites this volume. It is also cited in Burrow. In a case Justice Lee acted on the authority of a decision in 2 Modern. The third volume is not quite so good though some cases are well reported. Here will be found reported some of the decisions of Chief Justice Jeffries who appears in a much better light in these reports than one would have expected from the reputation he has acquired in history. The fourth volume deals with

the King's Bench cases from 1691-1696. With reference to this volume, when upon the search of the rolls it was found that in a particular case the Report had omitted a material circumstance, Holt, C. J. got wild and declared "see the inconveniences of these scambling reports. They will make us appear to posterity for a parcel of blockheads." The fifth volume dealing with 1693-1700 is of the same character. Many of the cases are reported here in a conversational form, the reporter noting the interruptions and other exact words of the Court. These volumes seem to be the result of some commercial venture over which many lawyers were employed with varying results according to the merits of the reporter. The sixth volume reports both Common Law and Chancery cases of 1703-1705 and is stated to be good authority by Justice Willes (9) though Hardwicke was not posed to regard it as of great authority (10). Volume VII (1733-1746) is of little authority. Volume VIII reports King's Bench cases of about the same period. The reporting of the Common Law seems to be bad. Dr. Lushington spoke with special reference to this volume that there are no reports upon which less reliance can be placed. A corrected edition of this volume appeared later on which improved it considerably. In 7 Term Reports 239 Mr. Justice Wilmot said that nine cases out of ten in this report (11) were wrong.

10 Modern temp. Macclesfield is also not much good (1709-1721). The 11th also is not of much authority though here also a distinction is to be made especially between an old edition and a later improved edition.

12 Modern covers the period 1690-1702. Though this also has been pronounced to be of no authority (12), there is reason to believe that it is printed from the manuscript of Judge Eyre and is therefore deserving of more respect.

Freeman was a Lord Chancellor of Ireland. His notebook was stolen by a servant and was published without the consent of the author's family. On this ground some prejudice attaches to the report but it has since come to be acknowledged to be good authority (13). Freeman's Report contains not only reports at law but also reports of Chancery cases.

Shower's Reports (1678-1695) had the disapproval of

9. Ellis Blackburn and Ellis 948.

10. Cases temp. Hardwicke Lee, p. 34, 1 Ves. 11.

11. *See also* 3 Bur 1326, 2 Bur 1062, 3 Man and Ry 405.

12. 1 Douglas 83.

13. 1 Mer 87, 1 Ba and Be 307.

Lord Hardwicke (14), of Lord Holt (15) and of Lord Abinger on the other hand has been commended by Lord Mansfield (16). The difference of opinion is accounted for possibly by the difference in editions each had to deal with. The earlier editions were very corrupt. The third edition was a great improvement on the first two. He died a recorder. He did not live long enough to rise higher.

Skinner's King's Bench Reports (1681-1698) though good are not cited because other reports were published before and had the start in the abridgments and other books of reference. Sir Edward Lutwyche was a Judge of the Common Pleas in the reign of James II and afterwards practised till the reign of Queen Anne as sergeant and appeared in most of the cases he reports. The record portion is in Latin and the arguments and the judgments in French. They were originally published by himself and therefore are accurate. He was a great master of pleadings and his knowledge appears in the reports. He had the misfortune to have an editor who attached to the work an abusive commentary.

Carthew was called by Lord Thurlow a bad reporter but Lord Hardwicke (17), Lord Kenyon (18) and Chief Justice Willes (19) thought otherwise. He reports King's Bench cases (1690-1701).

Carthew, Levinz, Shower, Skinner, The Modern Reports, Salked (1689-1712), cases tempore Holt (1688-1711) and Lord Raymond's Reports (1694-1734) report Lord Holt's judgments. The last alone do justice to the great judicial powers of the Chief Justice. The rest are mere notes of judgments. Cases tempore Holt is an abridgment mostly of the reports in the other series but some of the cases are believed to have been taken from Holt's own manuscript. The first two volumes of Salked were published under the supervision of Lord Hardwicke. Their accuracy is not questioned but the reports are too brief to give a clear idea of the judgments reported. Lord Raymond was Solicitor-General, Attorney-General, Judge of the King's Bench and finally the Chief Justice of the King's Bench. Lord Mansfield questioned the accuracy of some of the reports in the beginning of the first volume but Chief Justice Denman and Baron Bolland took a different view. The cases found fault with by Lord Mansfield were not all of Lord Raymond's reporting. They were

14. 1 Ves. 525. 15. 11 Modern 196, 3 Man 253. 16. 1 Bur 235.
17. 2 Atkyns 665. 18. 2 Term 776. 19. Willes 182.

got by him from others and other names of the reporters also are given in the report. After the death of Holt, Raymond's reporting slackened. *Coggs* v. *Bernard*, the leading case on bailments and *Ashly* v. *White* both judgments of Lord Holt are reported by Lord Raymond. Holt, C. J., was the first to lay down the doctrine which was afterwards fully established by Lord Mansfield in *Somerset* v. *Negro* that the status of slavery cannot exist in England. (Cases Tempore Holt, p. 405). He put an end to the practice of giving evidence of prior misconduct of prisoners and also of trying them in fetters. His puisnes were men of character though not of great learning and though they differed from him occasionally, they did not factiously combine against him at times a great thing for those times. At times, however, he was too subtle and profound for them. Lord Raymond gives an instance in language which shows that he had no great veneration for them. After mentioning an objection of the Chief Justice to the action, says the reporter, the three Judges seemed to be in a surprise and not in truth able to comprehend the objection and therefore they persisted in their former opinion talking of agreements, intent of parties, binding of the land, and I know not what and so they gave judgment for plaintiff against the opinion of Holt. It was by his conduct when presiding on the trial of State prosecutions and determining questions of constitutional importance in which two Houses of Parliament were parties that he has become famous. He refused to give reasons for his judgment when called upon by a committee of the House of Lords on the ground that he was not bound to do so unless there was an appeal before them and in their judicial capacity they called upon him to do so. He put an end to prosecutions for witchcraft by directing in one case the prosecution of the complainant himself who pretended that he was bewitched on the ground that he was an impostor and a cheat. A very interesting case in which he exposed pretenders to extraordinary virtue with whom the country abounded just then is recorded. The Chief Justice having committed one such for trial, one of his companions in holiness came to the Chief Justice and said: "I come to you a prophet from Lord God Who has sent me to you that you may grant a *nolle prosequi* to His servant whom thou has sent to prison." Answered Holt, C. J.: "Thou art a false prophet and a lying knave. If the Lord God sent thee it would have been to the Attorney-General for He knows that it belongs to the Attorney-General and not to the Chief Justice to grant a

nolle prosequi: But I, as Chief Justice, can grant a warrant to commit thee to bear him company." Lord Campbell says that some people maliciously inclined accounted for his unwearied devotion to business by his dislike to the society of Lady Holt who was a shrew. In Lord Raymond's Reports there is the repetition of an agreement to pay in geometric progression. It was an agreement in return for an immediate promise to pay some money and some more after the performance of the agreement to deliver two grains of rye on the next Monday, four on the next, eight on the next and so forth for a year. Chief Justice Holt and his puisnes were puzzled over it considerably and were, in fact, inclined to hold that however foolish the agreement, the defendant was bound by it. But somehow the old precedent of Chief Justice Hyde's in Levinz was remembered and the question was referred to the jury to find what was reasonable damages.

Sir John Fortescue, at different times Baron of the Exchequer, Judge of the Common Pleas and of the King's Bench is the author of the reports called Fortescue's Reports (1695-1738). They were prepared with more than usual pains. He takes particular pains to make his judgment appear polished in comparison with the rest of the Judges. One opinion of Fortescue may be referred to. A man's bed stood so that he lodged in two parishes at once. The question was— where his settlement should be ? Mr. Justice Fortescue held where his head lay, there was his settlement the head being the more noble part.

Comyns, Chief Baron of the Exchequer and the author of the well-known digest also, has a report to his credit but not equally famous as his digest. The report was published after his death. It was composed in French mostly.

Practical Register of the Common Pleas is a book of reports for the most part on points of practice. Gilbert's cases in law and equity purport to report cases of the time of Lord Chief Justice Parker (1713-1715). The description notwithstanding the reports do not contain a single case in equity.

Bunbury, a postman of the Court of Exchequer, is responsible for a report of the Exchequer cases (1713-1742). They were edited after his death by his son-in-law Sergeant Wilson. The reports are short and often unsatisfactory. Lord Mansfield characterised them as loose notes not designed for publication and therefore of little authority. Baron

Parke thought that it was not right to discount them in that way, having regard to the status of the author and the competency of the editor.

Strange's Reports (1716-1749) contain some of Hardwicke's arguments when at the bar and his judgments when Chief Justice. Hardwicke and Strange were fellow-students and there was great intimacy between them. Chief Justice Willes calls him a faithful reporter. But his notes seem too short to be always intelligible. He became a Master of the Rolls, thanks to his friend Lord Hardwicke.

Barnardistone (1726-1735) was under a cloud for a long time owing to the adverse comments of Lord Mansfield. He was damned also by Lord Kenyon. Lord Lyndhurst said " in my younger days it was said of Barnardistone that he was accustomed to slumber over his note-book and the wags in the rear took the opportunity of scribbling nonsense in it." This seems to be exaggerated. Lord Eldon thought that in Barnardistone's book there were reports of great authority and since there have been many testimonials in praise of the accuracy of Barnardistone given by Judges and other competent authority. Lord Mansfield had a rather summary way in these matters and also apparently did not like Barnardistone.

Fitzgibbon's Reports, though as reports, seem to be accurate enough and have been so pronounced, were looked down upon and Judges would not allow them even to be cited as their author was a mere student and it was naturally considered *infra dig* that cases from such reports should be cited. Fitzgibbon appears to have gone immediately after being called to the bar to Ireland and there to have achieved for himself considerable position.

Second of W. Kelyng reports some Equity cases (1731-1736). Though Viner seems to have condemned it, it does not seem to be worse than Comberback and VIII. Modern which Viner himself has abridged.

Barne's Reports are of authority on points of practice (1732-1760) having won the good opinion of so competent an authority as Chief Justice Willes.

Ridgeway's Hardwicke (1733-1737) and Analy's Hardwicke (1733-1737) report cases of Lord Hardwicke when Chief Justice. He was more famous as Chancellor than as Chief Justice.

Willes' Reports (1737-1760) have the reputation along with Wilson as being the most authoritative reports of the reign of George II. They were prepared by Chief Justice Willes himself though published after his death.

Most of the cases reported by Andrews are to be found also in Strange and cases temp. Hardwicke but seem to be more fully reported here. Parker's Exchequer Reports (1743-1767) are by Sir Thomas Parker himself and naturally of great authority.

Wilson's Reports covering the period 1743-1775 give the reports of cases by Wilmot, C. J. and also of cases decided by Chief Justices Willes and De Grey. The leading case of *Collins* v. *Blattern* decided by Wilmot, C. J. is found reported in Wilson. The other sources of information as to Wilmot's judgment is Wilmot's notes.

The Reports of Sir William Blackstone (1746-1780) though prepared by that Judge do not seem to be of high authority. Most of the cases in Blackstone are reported either in Wilson or in Burrow. The celebrated case of *Scot* v. *Shephard* in Smith's leading cases is taken from Blackstone's Reports though it is also reported in Wilson.

Kenyon's Reports (1753-1760) were published from the genuine manuscripts of Lord Kenyon. They were published long after the time the cases were decided being in fact a posthumous publication.

Burrow's Reports mark an epoch in the history of reporting. There have been a few good reporters before him, no doubt like Plowden, Saunders and others. But he seems to have grasped the true essentials of a good report that it should contain a statement of facts by the reporter, the arguments of counsel and then the judgment, without more of statements of facts or recapitulation of argument in the judgment than is indispensable to show to what the Court is directing its observations. The reporter's work so conceived becomes a real work of art. The judgment would not be in that scheme *verbatim* nor do Burrow's Reports pretend to be such. "Let me once for all," he says, "caution the reader. I pledge my credit and character only that the case and judgment and the outlines of the grounds or reasons of the decision are right." Coke's conception of reporting may also be noted in this connection. "And now that I have taken upon me to make a report of their arguments," he says, "I

ought to do the same as fully truly and sincerely as possible as I can. Howbeit seeing that almost every Judge had in the course of his argument a particular method and I must only hold myself to one, I shall give no just offence to any if I challenge that which of right is one to every reporter that is to reduce the sum of all to such a method as upon consideration had of all the arguments, the reporter himself thinks to be fittest and clearest for the right understanding of the true reasons and causes of the judgment and the resolutions of the case in question." 7 R. 4 a. In the hands of an inefficient or incompetent reporter, such a method of reporting may give a wholly wrong impression of the judgment. It is for this reason that in later years the practice of reporting the judgments *verbatim* omitting such portions of the judgment as relate to facts and subjecting it to such correction as is absolutely necessary has come into vogue. In the case of the Law Reports, the practice seems to be to submit the corrections to the Judges concerned. The method of Burrow was adopted by East, Maule, Selwyn, Barnewall, Alderson and others. The system of term or monthly reporting had not yet been established in Burrow's time so that he could take his own time in improving the reports and publishing them. He was also very fortunate in the Judges he had to report. Besides Lord Mansfield, there were Sir Michael Foster, "one of the best Crown lawyers," Sir Eardley Wilmot, C. J. of the Common Pleas, Yates, Blackstone, Ashurst and Buller, all eminent lawyers. Before we speak of the contributions of Lord Mansfield to the growth of English Law, it may be well that we notice shortly some of his predecessors in the office. The Chief Justices that successively ruled the King's Bench after Lord Holt were Chief Justice Pratt (1718-1725), Lord Raymond (1725-1733), Lord Hardwicke (1733-1737), Chief Justice Lee (1737-1750), Chief Justice Ryder (1750-1756) and Lord Mansfield (1756-1786). Two Chief Justices of the Common Pleas are also famous. They are Chief Justice Willes and Chief Justice Wilmot. Neither Pratt nor Ryder were particularly able, though both of them seem to have been honest men and had in their time panegyrists. Lord Hardwicke became famous subsequently as Lord Chancellor. Pratt's judgments are to be found in Strange and also in other Reports like Lord Raymond's, Burrow and Modern Reports. They deal mostly with questions of poor rates and parochial settlements. One

case, however, is interesting and is reported in 1 Strange 557. There, the question was, whether the Vice-Chancellor of the University of Cambridge had authority to deprive a person of his academical degrees without his being duly summoned or heard. The Chief Justice held that he could not do so for the sufficient reason that the English Law "adopts the first rule of natural justice that no man shall be condemned till he had been heard or had an opportunity of being heard in his defence." The Puisnes concurred, one of them citing a precedent of high authority—Adam and Eve's case before God Himself as reported in the Bible. It was in Lord Raymond's time that the law of murder and manslaughter was brought to the degree of precision in which we now find it with all its nice distinctions and qualifications (19). Lord Raymond's authority as a Judge was so high that his decisions at *nisi prius* were reported and are taken as settling some of the points till then doubtful. Lee was a puisne for seven years before he became Chief Justice. He was made a Judge because of his knowledge of special pleading in which Lord Raymond was defective. His judgments are reported in Strange. He is responsible for the interesting judgment that a woman is entitled to the office of sexton and that if she was entitled to hold the office, she was also entitled to vote (20) Lord Mansfield became Judge in 1756. His was the most dominating personality of all. Though he presided for over thirty years (1756-1788) in the Court of the King's Bench, there were in all that time only two cases in which his opinion was not unanimously adopted by his brethren on the Bench. Again, of the many thousands of judgments which Lord Mansfield pronounced, two only were reversed. "The fact that the Chancellor's decrees were affirmed," says Lord Campbell, "amount to very little for the only appeal is to the House of Lords where the same person presides, so that it may be considered *ab eodem ad eundem*." But a writ of error then lay from the King's Bench either to the Exchequer Chamber constituted of the Judges of the Common Pleas and Exchequer or to the House of Lords to be heard before the Lord Chancellor and all the Judges of England without any predisposition to affirm. The Chancellors were so often men opposed to him in politics. There was never a Bill of Exception tendered to his direction though able counsel opposed to him in politics like Dunning and Erskine appeared.

19. 2 Lord Raymond 1500. 20. 2 Strange 1114.

They either acquiesced in his ruling or were perfectly satisfied that the matter might fairly be brought before the Court and satisfactorily determined. The difference between the two procedures was this : A Bill of Exception was given by the Statute of Westminster passed in the reign of Edward I and was an admirable check "on the rashness and mendacity of Judges." (The language is of Lord Campbell.) For it empowered the parties to put down in writing the exact terms in which the Judge laid down the law and subjected them to an action if he did not acknowledge it by his seal. It then went, by a writ of error, before a superior tribunal where his ruling was considered and was either affirmed or reversed. On a motion for a new trial, the Judge at his discretion state verbally how he laid down the law, no averment being allowed against his statement and the question could not be carried before a higher Court. Till that time the bad practice prevailed that almost all cases which came before Judges, sitting *in banco,* were argued two or three or even so often as four times over in successive terms, although not attended with any difficulty—a further argument being ordered as a matter of course, at the request of the party who apprehended that the inclination of the Court was against him. Lord Mansfield always refused a second argument unless the Court entertained serious doubts. The custom likewise had been to abstain from deciding at the close of the argument, there hardly ever being a judgment entered without several entries of *curia advisari vult.* The Judges often forgot in the process the reasons and authorities brought forward at the bar. Lord Mansfield introduced the practice of delivering judgment immediately on the conclusion of the arguments. He made the Commercial Law of England. Till then, if an action turning upon a question of a mercantile law were brought in a Court of Law, the Judge submitted it to the jury who determined it according to their own notions of what was fair and no general rule was laid down. Mr. Justice Buller delivering judgment in the leading case of *Lickbarrow* v. *Thomson* said : " I should be very sorry to find myself under a necessity of differing from any case upon this subject which has been decided by Lord Mansfield who may be truly said to be the founder of the Commercial Law of this country." The Law of Insurance is almost of his creation, so also many of the rules now taken almost as axiomatic with reference to bills of exchange and promissory notes were laid down by him. He laid down the correct rule as to the extent to which

English Law is taken to be introduced into the Colonies or conquered territories (21).

In *Fabriqas* v. *Mostyn* (22) he laid down : "The monstrous proposition that a Governor acting by virtue of Letters Patent under the Great Seal is accountable only to God and his own conscience, that he is absolutely despotic, and can despoil those under his rule both of their liberty and property with impunity is abhorrent to the principles of natural justice and is contrary to the Law of England which says to all the King's subjects 'Whensoever and wheresoever you are wronged, you shall have a remedy'." He emphatically laid down the principle that "the air of England has long been too pure for a slave and every man is free who breathes it. Every man who comes into England is entitled to the protection of English Law, whatever oppression he may heretofore have suffered and whatever may be the colour of his skin," against some dicta of Lord Hardwicke and Lord Talbot. He delivered a valuable opinion affirming copyright in Common Law. That was the first case in which there was a difference of opinion. To his credit stand many improvements in the Law of Evidence. In the process he had to overrule many dicta to be found in the old reports. He brushed them aside saying : "We do not sit here to take our rules of evidence from Siderfin and Keble." The whole of it was Judge-made law, made as Lord Campbell notes, by Judges of very narrow understanding, and Lord Mansfield tried to get rid of them wherever he could and bring the rules more into conformity with common sense and justice. Between precedent and principle as he conceived it, he sometimes went against precedent and his successors, Lord Kenyon especially, and Lord Eldon, who both had a prejudice against him, promptly corrected him. Sitting in the House of Lords, he directed the judgment of that body both as to English and as to Scotch cases. His judgments will be found reported in Burrow, Cowper, Douglas, Dumford and East, *i. e.*, Term Reports—all of them excellent reports more or less on the same plan, the last, more condensed and not so elaborate and yet not less essentially good. Burrow did not take the certificate of Judges as was usual and in his preface he says he follows the practice of Foster and prefers to stand on his own merits. He was not free from the ordinary weaknesses of reporters of making themselves appear to advantage.

---

21. *Campbell* v. *Hall*, Cowp. 204. 22. Cowper 161.

In one case he was not heard, but he appends pages of argument which he was to have addressed if called upon.

Next, we shall give some account of reports that deal exclusively with criminal cases. We have First or Kelyng's Reports to which we have already referred. Leach's Reports deal with Crownside matters from 1730-1815 ; Foster's from 1743-1761. Sir Michael Foster was a Judge of the King's Bench and was reputed to be a great criminal lawyer. Out of deference to Lord Mansfield, whose puisne he was, he withdrew a dissenting opinion of his. The letter of Mansfield is characteristic. "The authorities which you cite prove strongly your position; but they seem founded in subtle nicety and very literal interpretation and not upon the large principles you lay down, the doing justice to the public and adapting the punishment to the degree of guilt. The construction of the majority is agreeable to justice, and, therefore, rather than support the wrong upon artificial reasonings of law, I think it better to leave the matter where it is. It is not *dignus vindice nodus*. "

SUMMARY OF ENGLISH CASES.

AGRICULTURAL WHOLESALE SOCIETY, LTD. *v.* BIDDULPH AND DISTRICT AGRICULTURAL SOCIETY, LTD., (1925) 1 Ch. 769 : 94 L. J. Ch. 397.

Company—Shareholders—Limitation of liability—Collateral obligation exceeding limits—If ultra vires.

The limitation of the general liability of a member of a company or society to a definite amount in respect of the general engagements of the company is not incompatible with there being a subsisting collateral liability cast upon the members by virtue of a special bargain in the Articles of Association. Such a provision in the Articles of Association is not *ultra vires* or opposed to the principles of limited liability. (1923) 1 Ch. 342 overruled.

In re PENNINGTON AND OWEN, LTD., (1925) 1 Ch. 825.

Set-off—Company—Winding up—Debt due by Company —If can be set off against debt due to Company by a partnership of which creditor is one partner.

A Company which was being wound up owed a debt to *X* and at the same time there was a debt due to the Company from a partnership of which *X* was a partner. The liquidator

claimed to set off the one against the other. *Held,* the partnership debt being a joint and several debt and not a joint debt, a claim to set off was not sustainable.

THORN *v.* MADDEN, (1925) 1 Ch. 847.

Landlord and tenant—Covenant—Breach of—Agreement not to use premises for trade or business or otherwise than as a private dwelling-house—Paying guests received—If amounts to breach.

A lessee covenanted with her lessor that she would not use the premises "for the purpose of any trade or business or use it otherwise than as a private dwelling-house or professional residence." Her assignee began to take in paying guests, secured by private arrangements and not public advertisement. *Held,* it amounted to a breach of the covenant and could be restrained by injunction.

In re LLOYD'S FURNITURE PALACE, LTD. : EVANS *v.* THE COMPANY, (1925) 1 Ch. 853.

Fraudulent preference—Company—Issue of debentures—Delay in, for retaining credit—If voidable under 13 *Eliz. c.* 5.

A Company by its resolution agreed to issue debentures as security for past and future loans given by a creditor. But the Directors deferred the issue of the same, as it enabled them to retain their general credit. Ultimately they were issued and more than three months alter, the Company was ordered to be wound up compulsorily. The liquidator raised the question whether the debentures were not void under 13 Eliz. c. 5. *Held,* they were not void as against the liquidator. If however the winding-up order had been made upon a petition presented within three months of the issue of the debentures, they would have been void as a fraudulent preference.

Under the statute a conveyance is not avoided merely because it is made with the intention of preferring, and does in the result prefer, one creditor over the others. Apart from the rules of bankruptcy a debtor can discharge his debts in any order he pleases unless the debtor is himself in some way benefited by the conveyance.

COMMONWEALTH TRUST *v.* AKOTEY, 94 L. J. P. C. 167.

*Sale of goods—Contract not completed—Purchaser selling to third party—*Bona fide *purchaser for value—Estoppel.*

F

A sold a certain number of bags of cocoa to *B* and sent them to him. *B* took delivery and sold them to *C* who purchased in good faith and paid the consideration therefor. It subsequently transpired that the contract of sale between *A* and *B* had not been completed, as there were disputes regarding the price, but *C* did not know of it. In an action for conversion by *A* against *B* and *C*, *held*, *A* could not recover from *C* as he permitted *B* to go into full possession, with all the insignia of apparent title and therefore a *bona fide* purchaser for value from him is protected under the law.

KERSLAKE *v.* KNIGHT, 94 L J K B 919.

Lottery—Combination of newspaper and shopping—Tickets distributed along with articles purchased—Selecting tickets by lot.

The proprietor of a newspaper evolved a scheme according to which shopkeepers who advertised in the columns of the newspaper got a number of tickets with counterfoils. The shopkeepers were to distribute them to their customers gratis according to the value of the purchases made. Once a week the counterfoils were collected and by lot a certain number of tickets were drawn and money prizes distributed to the winning ticket-holders, who under the scheme were under an obligation to exhibit at some of their windows a small card containing the name of the newspaper. *Held*, the scheme amounted to a lottery.

SEDGWICK COLLINS AND CO. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, (1926) 1 K. B. 1 : 95 L. J. K. B. 7.

Garnishee order—Grant of—Discretion—Liability of debtor to pay over again—Debt due to foreign Company—Service of notice—Judgment by default.

A Russian Company had a branch office in England and an agent to accept service of notices, etc., in judicial proceedings. As a result of the revolution in Russia the Company became the property of the Soviet Government. Thereafter an English creditor, to whom the Company owed money, sued the Company serving the writ on the old agent. The latter objected that the Company had ceased to exist and that he had no power to appear on behalf of the Company but a judgment was passed against the Company for default of appearance. Subsequently, the decree-holders applied for a gar-

nishee order to attach debts due to the Company from third parties. *Held*, by the majority of the Court of Appeal (Scrutton, L. J. dissenting) that the Company having been registered in England as a matter of international comity the Soviet Government would have to recognise the validity of the judgment passed against the Company, the writ having been served on the agent and hence a garnishee order absolute could be passed.

Per Scrutton, L. J.—The making of a garnishee order absolute is not a matter of right but of discretion and if the order would have the effect of leaving the garnishee liable to pay the amount of his debt a second time it should be refused. *Quaere* : If a Government is bound by international comity to recognise a judgment obtained by default of appearance, though the service of the writ was in accordance with the *lex fori*? It is not reasonable that a man who is no longer an agent of a foreign Company and who protests against his being treated as such should be used as a means of obtaining a judgment by default.

GRIFFIN *v.* PILLET, (1926) 1 K. B. 17: 95 L. J. K. B. 67.

Landlord and tenant—Covenant to keep premises in repair—Omission to—Notice given—Effect of—Tenant suffering injuries—Liability of landlord.

A lease deed contained a covenant on the part of the landlord to keep the premises "in good and substantial repair". During the currency of the lease the tenant wrote to the landlord that the steps to the front door wanted attention. The landlord's agent on inspection found that they were in a dangerous condition but before steps were taken to repair the same the steps collapsed while the tenant was going out, as a result of which he fell into a cellar below and sustained serious injuries to his leg. He then sued his landlord for damages for the breach of covenant. *Held*, in such cases the liability of the landlord arises only when he has received notice of want of repair, but the notice need not specify the precise degree of non-repair. It is quite sufficient if it puts the lessor on enquiry and imposes on him the obligation of ascertaining the extent of the non-repair and of taking the necessary steps to remedy the defect. After receiving a letter from the tenant, the landlord gets a right of entry to examine

the condition of the premises and thereafter he cannot plead that express notice of the actual non-repair was not given to him.

JONES *v.* TARR, (1926) 2 K. B. 25.

Workmen's Compensation Act—"Arising out of and in the course of employment"—Workman in mine—Sending boy to another owner's mine to borrow hammer—Accident resulting in death—Attempt to rescue another workman—Effect of.

A who was doing brickwork in a mine sent *B* who was assisting him to a neighbouring mine belonging to a different person to borrow a bricking hammer. In coming out of the mine with the hammer *B* was suffocated by poisonous gas and fell into the pit. Hearing of it, *A* went to his rescue and himself shared the same fate. In a claim for compensation by a relation of *A* under the Workmen's Compensation Act against the owner of the mine, *held* (by the Court of Appeal), that *A* was acting outside the sphere of his employment and was exposing himself to a risk unconnected with it. Nor was it a case of emergency to a fellow-workman who was at the time doing an act in the course of employment.

TURNER *v.* CIVIL SERVICE SUPPLY ASSOCIATION, LTD., (1926) 1 K. B. 50.

Contract—Carriage of goods—Loss by fire—Exception clause—Negligence of servant—Liability—Common carrier and other carrier—Difference in liability.

In a contract for the carriage of goods between the plaintiff, the owner and the defendants who were furniture-removal contractors and warehousemen, one of the clauses was "that the contractors are not responsible for loss or damage caused by fire". While the goods were being carried on a motor lorry, the driver poured some petrol into the engine, which being hot, flames burst out and the lorry and its contents were almost entirely consumed by fire. The plaintiff sued for damages. *Held,* the defendants were entirely protected by the clause in the contract relating to damage by fire even though it was caused by the negligence of their servants There are two classes of carriers, *i. e.,* the common carrier and the ordinary carrier who is not a common carrier. Different considerations apply to these different classes. The former is really an insurer,

and he is responsible in every case, except when the loss is caused by act of God or the King's enemies. His liability is absolute and if he desires to limit his liability for negligence he must do so in express and unambiguous terms. An ordinary carrier, however, undertakes to answer for loss arising from his own or his servant's negligence and will be liable for loss arising from the failure to use proper skill and care. His liability is not absolute. But if there is an exception clause in the contract, that must be clear and unambiguous in its terms.

[This decision was followed by Horridge, J. in *Fagan* v. *Green and Edwards, Limited,* (1926) 1 K. B. 102, where the facts too are similar.]

AMAN *v.* SOUTHERN RAILWAY COMPANY, (1926) 1 K. B. 59 : 95 L. J. K. B. 58.

Company—Debenture stock—Judgment obtained for arrears of interest—Absorption of debentures by another concern—Effect of, on judgment—Merger.

A person who held certain debentures issued by a Railway Company recovered judgment against the Company for the arrears of interest due to him. Subsequently under an absorption scheme, the debenture-holder became the holder of some stock in the absorbing Company " in substitution for the stock in the absorbed Company and in satisfaction of all claims thereunder including any arrears of interest". The question arose whether he could still recover from the new Company the amount of his judgment debt. *Held,* by the Court of Appeal (affirming Greer, J. on this point), that he could not recover on the judgment. The judgment was only a security for the debt and the debt having been extinguished as a result of the absorption scheme, the judgment also must be deemed to be extinguished.

Per Bankes, L. J.—The effect of a judgment obtained by a mortgagee for a mortgagor's debt merely operates as an additional security for the due payment of the debt and if the debt is extinguished the judgment goes with it.

Per Scrutton, L. J.—Where a mortgagee of real property recovers judgment in a personal action for the mortgage debt, the mortgagee's real rights in the mortgaged property are not merged in the judgment but remain, and the judgment is merely an additional security for the payment of the debt.

LEMON *v.* AUSTIN FRIARS INVESTMENT TRUST, LTD., (1926) 1 Ch. 1.

Company—Debentures—What are—Tests for deciding—Name not material—Register of holders—Right of inspection—Companies (Consolidation) Act, 1908, *S.* 102.

A Company being desirous of raising money for the benefit of its undertaking determined upon an issue of £1,400,000 "income stock" payable out of profits and issued to persons subscribing to that stock documents called "income stock certificates". The certificates contained an acknowledgment that the Company was indebted to the registered holder for the amount mentioned therein, formed a series ranking *pari passu*. Provision was made for payment out of the profits and provision was made for modifying the rights of certificate-holders subject to certain conditions. *Held,* by the Court of Appeal (affirming Lawrence, J.) they were debentures within the meaning of S. 102 of the Companies (Consolidation) Act, 1908, and every certificate-holder had a right to inspect the register of certificates.

General characteristics of debentures discussed.

JOTTINGS AND CUTTINGS.

THE LATE MR. T. V. SESHAGIRI AIYAR.

Reference in High Court.—Touching tributes were paid on Thursday, 25th February, 1926 to the memory of Mr. T. V. Seshagiri Aiyar, who for seven years was an honoured member of the Bench.

The Second Court, the largest hall in the High Court, was crowded to the utmost with practitioners, senior and junior. The Hon'ble the Chief Justice presided and with him four senior Judges—Hon'ble Justices Spencer, Kumaraswami Sastri, Phillips and Krishnan, were present. Almost all the officers of the Court were also present.

Mr. T. R. Ramachandra Aiyar, President of the Madras Vakils' Association (in the absence of the Advocate-General) said :—

MY LORDS,—We are deeply grieved to hear of the death of Mr. T. V. Seshagiri Aiyar after a somewhat prolonged illness at 3 P. M. yesterday. He was suffering from typhoid fever and at one stage hopes were entertained of his recovery. Unfortunately he had a relapse and was uncon-

scious for about 10 days. A couple of days ago he recovered consciousness and slender hopes were entertained of his recovery. But alas! he has gone!

Mr. T. V. Seshagiri Aiyar was born in 1860 in a village called Tiruchendurai in the Trichinopoly District. He had his eaerly education in a school in Trichinopoly town and about 1877 he joined the Presidency College where he passed his B. A. Examination in 1882. He qualified himself for the Bar in 1885 and in the next year he was enrolled. For a time he was an Assistant Professor in the Law College. Gradually his work at the Bar increased and he rose to the front ranks of the profession. He was very much liked by all alike on account of his very good manners and sympathetic nature. He was well grounded in law, particularly case-law and took special interest in studying law. He used to maintain a note book in which he noted cases, and this book he afterwards used to carry to the Bench.

In about 1914. Mr. T. V. Seshagiri Aiyar was elevated to the High Court Bench. There, his brother Judges liked him very much; and I well remember Sir John Wallis remarking at one time : "When there is a paucity of decisions on a point, look into Mr. Seshagiri Aiyar's note book." I mention this to show how assiduously he worked and collected cases in order that he may be of the greatest use to the profession and the public. The Bar has had always to say something in praise of him. It was only the other day that a junior practitioner was telling me that if only a Judge went to the Court with cheerfulness, there will be no room for heartburning at all. Mr. Seshagiri Aiyar went to the Court always with cheerfulness; and in him there was a sympathetic outlook. He never offended any member of the Bar and he always insisted on the profession maintaining the highest traditions. He was a sound Judge and the Law Reports, in which were reported quite a large number of cases he had decided, testified to the depth of learning of which any Judge may be proud.

Mr. T. V. Seshagiri Aiyar took a great deal of interest in politics. He was a member of the local Legislative Council and a Fellow of the Madras University. He was also for a time a member of the University Syndicate. While in the Madras Legislature, he introduced several Bills, two of which Tirupati High School Bill and the Bill relating to Bequests and Gifts to unborn persons, are certainly very useful pieces

of legislation. He was a nominated member of the Indian Legislative Assembly and even there he did a lot of good work. He was moderate in his views on politics; he was not at all revolutionary but at the same time sufficiently liberal. He did not belong to any particular party at any time; but he joined all men irrespective of politics whenever he thought they were working in the right direction.

On the whole it must be said to his credit that he was one who believed that the welfare of the largest number should be the sole aim of all sons of India; and in this view he worked. The last public work he did was as President of the Central Flood Relief Committee. The Government recognised his excellant work and awarded him a Kaiser-i-Hind Gold Medal.

In short, Mr. Seshagiri Aiyar, was a brilliant student, an excellent gentleman, a good professor, a leading vakil, an eminent Judge, an ardent patriot, above all a kind and sympathetic friend. One who has such a record of work may truly be said to be great. And the members of the Bar wish to convey their feeling of regret to the bereaved family. We wish the deceased all peace in the next world.

Mr. J. C. Adam, Public Prosecutor, speaking on behalf of Barristers and other Advocates, associated himself with the sentiments expressed by Mr. T. R. Ramachandra Aiyar. "I knew Mr. Seshagiri Aiyar for about 20 years and during the whole of that time I may say, never on a single occasion did I hear him lose in any way that moderation with which he argued his cases and with which he treated other members of the Bar. He was in every respect a most gentlemanly advocate and in no way did he ever offend by arguing his cases in a manner which some members of the Bar did, that is, by being over-insistent or by not being too polite to their opponents. At the same time Mr. Seshagiri Aiyar used to put forward forcible arguments. He was well read in law and he could marshal his facts. When he rose to the Bench, he was extremely polite to the Bar, assisted the juniors and kept the seniors to some extent in their places. He had the extraordinary faculty of getting a practitioner stop without his knowing it. He was a very strong Judge, and we all appreciate very much the words spoken by Mr. T. R. Ramachandra Aiyar with reference to all that Mr. Seshagiri Aiyar did during his long and successful career."

The Hon'ble the Chief Justice, in replying, said: Mr. Ramachandra Aiyar, Mr. Adam and gentlemen of the

Bar,—I wish to associate myself and my brothers in the Bench, represented by those of us who are present in this Court to-day, with the tribute you have paid to our late colleague Mr. Seshagiri Aiyar. We also desire you to convey our deep sympathy along with that of the Bar to his relatives in their bereavement; and I am not forgetting that two of his near relatives are leading practitioners in these Courts, well known to all of us.

Mr. Seshagiri Aiyar's career was a remarkable one and a striking instance of how far courage, industry and resolution will carry a man of ability, though he started from the humblest beginnings. His early career might almost be described as a series of experiments: he was in turn a journalist and a law professor before he settled down to his ultimate choice—that of a practising lawyer. I trust that some one qualified for the task will write a history of his life. I feel convinced that will enhearten many young professional men who at times are tempted to regard the competition of professional life as too exacting to be endured, and to give up the struggle in despair. I cannot help thinking that some stimulus was derived by him from his association and contact in his early days with that magnetic versatile personality, Mr. Eardley Norton, of whom he always spoke in terms of warm admiration.

As an advocate, I personally never came across him, but I believe that every one of the Judges who are with me here knew him either as Judges before whom he practised or as comrades at the Bar. I knew him for five years as a colleague on the Bench, and it was my good fortune to sit with him for long spells of work together. His knowledge of case-law was proverbial and it was his pride to keep case book noted up as carefully when he was a Judge of ripe experience as when he was at the outset of his career as a junior practitioner. But he was a great deal more than a learned case lawyer; he invariably sought to get down to principles and to base his judgments on the broadest grounds. Furthermore, he never was pedantic with all his learning; and when he had to handle questions of fact he had at his command an abundance of commonsense and a broad and generous humanity which is sometimes lacking in lawyers less learned than he was.

On this occasion I desire to say a word not of the lawyer or of the Judge, but of the man as I knew him. Outside the work that is transacted in these Courts, a Judge comes across his colleagues in many administrative matters, and he was

respected and liked by all; and in my particular case we were also closely associated in educational work together for many years. I found him in all things a man of independent judgment, of unfailing courage in saying what he thought right to say, and of an inflexible standard of probity and honour which he not only followed himself but rigorously and rightly demanded of others. It was expressed with the gentleness and suavity which was characteristic of him; but the rigid principles were never departed from. He and I did not always agree as to what best to be done, but I think that each of us told the other forcibly what we thought without any reservation and with the certainty that we could differ without the slightest breach of friendship.

Another word and I have done. Mr. Seshagiri Aiyar retired from this Court at the age of 60 He might have taken a well-earned rest; had he done so, his days might have been prolonged. Instead, he elected to continue to serve his country with his old age in many fields of activity, all of which are well-known to you. I think I shall be rightly interpreting the feelings of all of us if I say that in him we mourn the loss not only of a distinguished lawyer, but a great servant of the public.

Sir Charles Spencer said:—The common loss that has fallen upon us all affects us each in particular and I am glad to add my tribute to the memory of a departed colleague. I first made the acquaintance of Mr. Seshagiri Aiyar when on an occasion he came to argue an up-country case before me when I was District Judge of Godavari. When he joined the High Court, it was known that on account of the age rule he could not complete his full time as a Judge and so the High Court had not the benefit of his talents for more than seven years. After he retired he did not remain idle, but did much useful public service at Delhi, Simla and Madras as a member of various committees and in aid of public objects like the South India Flood Relief.

I think what struck me most about our late colleague and friend was his alertness, his brightness, his quick perception of a point and his unrivalled knowledge of the case-law, Indian and English. He was a model of professional etiquette whose example is worthy of general imitation. In private life as on the Bench and at the Bar he was a man who was always urbane, courteous, good-tempered and cheerful and in fact a

man whose friendship was something real and worth having. The Presidency of Madras in general and the legal profession in particular are the poorer for his loss.

The Hon'ble Sir C. V. Kumaraswami Sastri, who followed, said :—I wish to associate myself with all the remarks that have fallen from His Lordship the Chief Justice. Mr. Seshagiri Aiyar belonged to a generation of Indians who by their deep learning, piety, courtesy or ability ennobled every branch of the profession to which they applied their talents, whether as members of the public, of the Bar or the Bench. Of him, it may be truly said, as it was said of others, he adorned whatever he touched. It is a pity that we should have had to lose such a man and that he should not have lived longer as an example for all those who need his help in these times of change and trouble. His lovable character, his talents of a high order, his courteous manners could never be forgotten by those who knew him. His one outstanding feature was his deep industry combined with deep learning and a desire not to give any offence to anybody. If he had a strong case he would argue it well ; if he had a weak case he would not hit at the Judge or at the opposite side. As a Judge he administered laws as they stood and did not desire to make new laws. He was a great student of Indian literature and religion. He had a passion for life consistent with what he thought was adapted to the genius of the country. He was an ardent champion of ordered life, and did not rush into wild methods. His judgment full of learning always followed precedents and I do not know if in any case in which he dealt with Hindu Law he departed violently from precedents. His loss I feel personally and must cause universal regret.

The Judges then retired.

—*The Hindu*, 25th February, 1926, p. 2.

The Cat and the Pigeons.—In the Courts these latter days it has been raining cats and dogs. In *Buckle* v. *Holmes*, Mr. Justice Shearman and Mr. Justice Sankey were, on Friday last week, involved in the discussion of principles applicable to cats and distinguishable, or said to be, from principles applicable to dogs (*Times*, 4th ult.), and on Wednesday last, Lords Justices Bankes, Warrington and Scrutton were approached with a view to a further and a better opinion. So intent is the pigeon-owner upon his theory that a cat is *ferae naturae* among the pigeons, however *domitae naturae* it may be by

the fire side, that an opportunity to appeal is accepted even upon the terms of paying the costs in any event ; and it may not be impossible that the House of Lords may be ultimately called upon to consider the matter. The contention is certainly intriguing, that cats are so patently vicious when there is a bird to be stalked, as to exclude the application of the principle of *scienter* from action brought by the owner of the stalked bird against the owner of the vicious cat. There springs to the mind's eye the picture of the sleek, purring household pet, suddenly crouching at the sight of its natural prey, and becoming a tiger pure and simple. It will be interesting to see if any Court can be induced to grade the same cat's *natura* according to its different moods; and still more interesting to see if the contention will be extended to other animals ? Incidentally, if the point is carried, no householder who lives in the country where game is preserved, will dare henceforth to keep a cat. He will prefer to be overrun by rats and mice rather than by lawsuits.

—*The Law Journal*, December 12, 1925, p. 1006.

Criticism of the Constitution.—We do not hesitate to describe Mr. Scurr's proposal for legislation to the effect that persons committed to trial shall be tried by a jury the majority of which, at least, is of their own class, as a piece of rank stupidity. Like so many other instances of Socialistic excess, the proposed change is based on an ignorance of the theory and practice of the existing system. The underlying suggestion is, of course, that every accused person who is not of an "upper class" suffers from an antagonism of the jury resulting from "class distinction". In the House the instance of poachers, or persons accused of "poaching," was quoted, and, if it was not said, it was certainly hinted that the juries who try such persons are invariably and inevitably composed of the class of persons who are poached upon. Nothing, of course, is further from the truth, as any practitioner with any experience of criminal courts in rural areas will agree. Surely the whole point of the jury system is that the selection is promiscuous? Imagination boggles at the uproar which would have ensued had any one dared to suggest, *apropos* a recent criminal proceeding against persons undoubtedly of an "upper class," that the jury to try the case should not on any account comprise a member socially inferior in grade to the accused. *The Law Journal* is no political partisan; avowedly

it is independent of political creed or party. But there are times when the excesses of the extremists try our temper and make it very hard for us to remain dispassionate. Those times are when the most democratic and invaluable elements of our law, constitution and administration of justice are assailed by critics who have not bothered to study them and who suggest substitutes which would make us the least free country in the world!

—*The Law Journal,* December, 19, 1925, p. 1018.

Sex and the Law.—The week has brought again to the forefront the position of the modern woman, *vis-a-vis* the law, and the new Bill, which is intended to give effect to the recent criticisms on the ground of anachronism of the theory of "coercion" as between husband and wife, is now under discussion in Parliamentary news. Miss. Wilkinson's attempts to get the House to protect the woman-worker against the hardship of the two-shift system are deprecated by the advanced eliminators of sex-distinction, though we doubt if any champion of the cause of women, however insistent her or his enthusiasm, is wise in carrying the theory of equality to such a length as to defy nature and physique? Contemporaneously we have a recent decision, at first sight opposed to the foregoing matters, but on a closer consideration found to be perfectly consistent, that a woman juror may be challenged for no other reason than that she is a woman: *Rex* v. *Wiliams* (*supra*). This modern battle of the sexes is a thing at which no man is allowed to laugh, if he wants to; so long, however, as any sense of humour remains with us, we must be permitted to smile at the first flush of indignation which was, it appears, felt among the enthusiasts for the cause of women at the declaration that their sex might be a matter of objection in a juror. It was not realised, and perhaps it is better not realised, that where the full right of challenge is applicable a juror might be objected to for the reason that he is not a woman!

—*The Law Journal,* December 19, 1925, p. 1020.

Sir Paul Vinogradoff.—The death of Sir Paul Vinogradoff, Corpus Professor of Jurisprudence at Oxford, removes an interesting and important figure in academic law. He will rank with the other great scholars who in different countries have been foremost in modern studies of the origin and development of law. Savigny in Germany, Ihering in Austria, Maine and Maitland in England, Fustel de Coulanges in

France, and, to add one living name, O. W. Holmes now Associate Judge of the United States Supreme Court, in America. Vinogradoff, fresh from the knowledge of village communities in Russia, came with his wide learning, to study and throw new light on the village communities and their successor, the manorial system of this country, and he was welcomed by other workers in the same field—Maine and Maitland already mentioned, and Seebohm—and was not long in winning the general recognition which led to his succeeding Sir Frederick Pollock in the Corpus Professorship. Sir Paul Vinogradoff's career has been an outstanding example of international friendship, and marks the importance of the historical study of law which commenced so brilliantly in the last century.

—*The Law Journal*, December 26, 1925, p. 1037.

The Age of Consent.—The Report of the Sexual Offences against Young Persons Committee which has just been issued contains a mass of valuable suggestions; how many of them will receive legislative sanction cannot be predicted. There is always sharp criticism in Parliament of proposals which, however, well meant, may possibly be turned to injustice when applied in practice to particular cases. This will be especially so with the proposals to raise the age of consent to 17 years, and to abolish the defence of "reasonable belief." The Report is not unanimous. Mr. Priestley, K. C., who was the Chairman of the Committee, Mr. Fry, and Sir Guy Stephenson, are opposed to the raising of the age of consent, and the last two are opposed to the abolition of the defence of reasonable belief. It is probable, and we should say desirable, that these changes shall come, but this will be only after much debate in the wider forum of public opinion and Parliament.

—*The Law Journal*, December 26, 1925, p. 1038.

Sir George Jessel.—There is, as many of our readers will already know, a very interesting account in the current *Blackwood* of Sir George Jessel by his son, Sir Charles James Jessel.) It is singular that, considering Jessel's great reputation, there is so little to be found about him in contemporary memoirs. We may have been unfortunate in our selection, but there is nothing to be gleaned from the Memoirs of Fry or Bowen, or the Recollections of Lord Alverstone, or Sir Edward Clarke's "story of My Life", and we are not aware that a biography of

ostensible sale could not be proved to be by way of mortgage him was ever published, though he has two pages in the D. N. B. There are some eulogistic allusions to him in Lord Selborne's Memorials. To Fry, who succeeded to the Court of Appeal on Jessel's death in 1883, he was "the great Jew Judge" before whom he practised at the Rolls' Court in Chancery Lane, but there is nothing more. Lord Alverstone only mentions him in connection with a patent case about telephone receivers. The telephone was then in its infancy. Webster was defending the patent, and he won the case by the accuteness of his hearing. It was in the Court of Appeal, and Jessel was the presiding Judge. Webster said the message from the receiver was perfectly audible. To test it, Jessel had him up on the Bench and the experiment was quite successful. In this dearth of contemporary material, Sir Charles Jessel's story is all the more welcome.

—*The Law Journal,* January 9, 1926, p. 26.

NOTIFICATION.

First Grade Pleaders.—It is hereby notified for the information of the public that the High Court proposes to abolish the First Grade Pleadership Examination with effect from 1st July, 1928. Anyone who wishes to make any representation on the subject should do so in writing to the undersigned within six months of the date of this notification.

High Court, Madras, S. WADSWORTH,
1st February, 1926. *Registrar.*

BOOK REVIEWS.

SARKAR ON EVIDENCE, by S. C. Sarkar, 3rd edition, 1926. Published by M. C. Sarkar and Sons, Calcutta. Price Rs. 15

In reviewing the second edition of this work we drew attention to its various excellent features and to its claim to be a most authoritative treatise on the Indian Law of Evidence. We find that our review has been extracted in the opening page of this volume and we do not think that it is necessary to repeat here what we said before. To indicate the attention and care with which the present edition is prepared, it is only necessary to say that until the publication of the last edition it was considered by the Courts in this country that under the ruling of the Privy Council in *Balkishen Dass* v. *Legge* (1) a transaction of

1. (1899) I L R 22 A 149 (P C).

by extrinsic evidence and that the decisions of the English Courts of Equity allowing proof that a conveyance by way of sale was originally intended as a security for money was inapplicable to this country. This assumption has been considerably shaken by the recent decision of the Privy Council in *Rajah Bahadur Narasingerji Gyanagerji* v. *Raja Panuganti Parthasarathi Rayanin Garu* (2), although it is not easy to say from it the exact limits of the applicability of the English rule to this country. The present edition of Sarkar on Evidence has noticed the decision on page 527 and has referred to Mr. Justice Mookherjee's observations on *Balkishen Dass' case* (1) in *Kamla Sahai* v. *Babu Nandan* (3) and the lengths of which English decisions on the subject have gone. It is too much to expect that a treatise writer should go further, although it may be that in the light of this latest decision of the Privy Council some of the Indian decisions may require reconsideration. We have picked out only one example of the care and thoroughness bestowed by the author on the work. The present edition fully maintains the high level of its predecessor and will retain the high place achieved by it.

THE LAW OF BAD LIVELIHOOD, by S. Roy. Third edition. Published by R. Cambray and Co., Calcutta. Price Rs. 8.

The law relating to bad livelihood and cognate preventive measures by Mr. Sripati Roy has undergone three editions which itself testifies to its usefulness and popularity. In this work the author has dealt with the security sections of the Code of Criminal Procedure and the law on the allied subjects of preventive measures. The principles of the law on the subjects are dealt with and the cases are brought thoroughly up-to-date. One new feature of the present edition is that the author has, with a view to facilitate reference, appended marginal notes in bold type giving the precis of each ruling and paragraph. The Regulations and Acts relating to preventive measures given in the Appendix will be found to be of great use. It is needless to add that the sections of the Criminal Procedure Codes of 1923, 1898, 1882, 1872 and 1861 bearing on the subjects dealt with are also reproduced. We hope that this work will facilitate the comparative study of the growth and development of the law on bad livelihood and preventive measures.

1. (1899) I L R 22 A 149 (P C). 3. (1909) 11 C L J 39.
2. (1924) I L R 47 M 729: 47 M L J 809 (P C).